

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MAX KELLEY, #20305206,

Plaintiff,

V.

MICHAEL UPSHAW, et al.,

Defendants.

Case No. 6:20-cv-512-JDK-JDL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Max Kelly, a prisoner confined at the East Texas Treatment Center within the Texas Department of Criminal Justice (TDCJ), proceeding pro se and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for the disposition of the case.


On October 28, 2020, Judge Love issued a Report recommending that Plaintiff's civil rights action be dismissed, without prejudice, for want of prosecution and Plaintiff's failure to comply with an order of the Court. Docket No. 5. A copy of this Report was sent to Plaintiff at his last-known address, with an acknowledgment card. However, to date, no objections to the Report have been received.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court

examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 5) as the findings of this Court. It is therefore **ORDERED** that this case is **DISMISSED**, without prejudice, for want of prosecution and failure to obey a Court order.

So **ORDERED** and **SIGNED** this 8th day of **December, 2020**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE